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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,147	10/31/2003	Richard D. Zaun	15903D-US	2824
30689	7590	06/24/2008		
DEERE & COMPANY ONE JOHN DEERE PLACE MOLINE, IL 61265			EXAMINER KEENAN, JAMES W	
			ART UNIT 3652	PAPER NUMBER
			MAIL DATE 06/24/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/698,147

Applicant(s)

ZAUN ET AL.

Examiner

James Keenan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

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1. The parent application (SN 09/969,203) has been abandoned after prosecution was reopened after Appeal. Because of the similarity of claimed subject matter and the relevancy of the art used in rejecting the claims in the parent application, the examiner is of the opinion that the claims of the instant application could and should have been similarly rejected. An Office action is set forth below.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Wanker et al (US 3,952,889).

Wanker shows an apparatus for transporting and filling freight containers having an opening therein, comprising a chassis supported by ground engaging transport elements (considered to be the non-illustrated combine or harvester disclosed in at least col. 3, lines 17-26 and which inherently would have a chassis and wheels), a hopper having an open upper end defined by the upper perimeter of catch pans 42, 43, 44 and a lower outlet defined by the lower perimeter of the catch pans, a conveyor 15, 16 (generally), including both the belt conveyor 35 disposed beneath the hopper and blower conduit 17, 18, the conveyor having proximal and distal ends for moving material from the hopper outlet to the distal end, and a container chassis 11 supporting a removable freight container 19 (col. 4, lines 40-62) having an opening (not labeled but

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clear from fig. 1) therein for receiving material loaded by the conveyor, and wherein the chassis (of the combine) includes a hitch (not shown but considered to be the corresponding structure to which hitch 30 of the container chassis is coupled).

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wanker et al in view of Heltzel (US 3,154,202).

Wanker does not show the hitch to be a fifth wheel hitch.

Heltzel shows a towing vehicle with a chassis and a fifth wheel hitch (fig. 1) for towing container chassis 10.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Wanker by utilizing a fifth wheel hitch as the means of coupling the container chassis to the towing vehicle, as shown by Heltzel, so as to be able to transport the container chassis over longer distances (e.g., on the road).

6. Claims 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wanker et al in view of Doyer (US 2,818,052).

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Wanker does not explicitly disclose operating the conveyor at a speed and angle so as to throw the material into the container such that it follows an arcuate path to reach the opposite end of the container. It is noted, however, that it is generally well known and desirable to fill a container by moving material into the container as far away from the opening as feasible to avoid clogging and uneven filling. Further, the material would at least to some extent inherently follow an arcuate path, as it clearly could not have a purely horizontal or purely vertical motion.

Further, Doyer teaches a conveyor for throwing material into a container on a wheeled vehicle, wherein the speed and angle of the conveyor can be adjusted to direct the material into a desired location on the vehicle (col. 1, line 64 to col. 2, line 14). The material clearly follows an arcuate path (fig. 1).

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Wanker by enabling the speed and/or angle of the conveyor to be adjusted so as to allow the material to follow an arcuate path and place the material at a desired location in the container, such as the opposite end thereof, as suggested by Doyer, so as to fill up the container as uniformly as possible.

Re claims 4-6, although the particular claimed conveyor speed and angle are not taught by Doyer, since Doyer teaches the general desirability of adjusting the speed and angle of the conveyor, it would have been obvious for one of ordinary skill in the art at the time of the invention to have made the modified conveyor of Wanker run at a speed of 2,200 ft/min and an angle of 15 degrees, since when the general conditions of a claim are met, discovering an optimum range or value involves only routine skill in the art,

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especially since applicant has not demonstrated that these particular values of speed and angle solve any problems or otherwise would be unobviousness variations.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

As noted above, the prior art was cited in parent application 09/969,203, and is believed relevant to the instant application.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Keenan whose telephone number is 571-272-6925. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on 571-272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

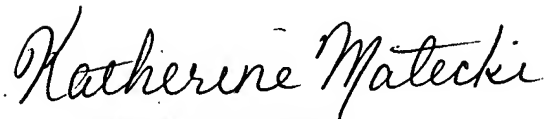
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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James Keenan
Primary Examiner
Art Unit 3652

jwk
6/17/08



APPROVED BY DIRECTOR
KATHERINE MATECKI
TC 3600